

*Mojave Desert*  
Air Quality Management District

---



Draft  
Staff Report  
Proposed Amendments to  
Rule 444 – Open Outdoor Fires

For adoption on  
September 25, 2006

14306 PARK AVE, VICTORVILLE, CA 92392-2310  
PHONE: (760) 245-1661  
FAX: (760) 245-2699

This page intentionally left blank.

**STAFF REPORT**  
**TABLE OF CONTENTS**  
**Rule 444 – *Open Outdoor Fires***

I. PURPOSE OF STAFF REPORT .....	1
II. EXECUTIVE SUMMARY .....	1
III. STAFF RECOMMENDATION .....	1
IV. LEGAL REQUIREMENTS CHECKLIST .....	2
V. DISCUSSION OF LEGAL REQUIREMENTS .....	3
A. REQUIRED ELEMENTS/FINDINGS.....	3
1. State Findings Required for Adoption of Rules & Regulations .....	3
a. Necessity .....	3
b. Authority .....	3
c. Clarity .....	3
d. Consistency .....	3
e. Nonduplication.....	3
f. Reference .....	4
g. Public Notice & Comment, Public Hearing.....	4
2. Federal Elements (SIP Submittals, Other Federal Submittals).....	4
a. Satisfaction of Underlying Federal Requirements .....	4
b. Public Notice and Comment .....	4
c. Availability of Document .....	4
d. Notice to Specified Entities .....	4
e. Public Hearing .....	5
f. Legal Authority to Adopt and Implement.....	5
g. Applicable State Laws and Regulations Were Followed.....	5
B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS .....	5
C. ECONOMIC ANALYSIS .....	6
1. General.....	6
2. Incremental Cost Effectiveness.....	6
D. ENVIRONMENTAL ANALYSIS (CEQA).....	6
E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS .....	6
1. Potential Environmental Impacts .....	6
2. Mitigation of Impacts.....	6
3. Alternative Methods of Compliance .....	7
F. PUBLIC REVIEW .....	7
VI. TECHNICAL DISCUSSION .....	7
A. SOURCE DESCRIPTION .....	7
B. EMISSIONS .....	7
C. CONTROL REQUIREMENTS.....	7
D. PROPOSED RULE SUMMARY .....	7
E. SIP HISTORY .....	9
1. SIP History .....	9
a. SIP in the San Bernardino County Portion of MDAQMD .....	9
b. SIP in the Riverside County Portion of the MDAQMD .....	10

2. SIP Analysis.....	11
Appendix A - Iterated Version.....	A-1
Appendix B - Public Notice Documents.....	B-1
Appendix C - Public Comments and Responses.....	C-1
Appendix D - California Environmental Quality Act Documentation .....	D-1
Appendix E - Bibliography .....	E-1

## **STAFF REPORT**

### **Rule 444 – *Open Outdoor Fires***

#### **I. PURPOSE OF STAFF REPORT**

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

#### **II. EXECUTIVE SUMMARY**

On July 1, 1993 the Mojave Desert Air Quality Management District (MDAQMD) was formed pursuant to statute. Pursuant to statute it also retained all the rules and regulations of its predecessor agency, the San Bernardino County Air Pollution Control District (SBCAPCD) until such time as the Governing Board of the MDAQMD wished to adopt, amend or rescind such rules. The MDAQMD Governing Board, at its very first meeting, reaffirmed all the rules and regulations of the SBCAPCD. Rule 444 was last amended on November 25, 1996 and this is the current version in the MDAQMD rulebook.

Rule 444 – *Open Outdoor Fires* regulates open outdoor fires, including, but not limited to, tumbleweed burning, Agricultural Burning, field crop burning, Range Improvement Burning, Forest Management Burning, and Wildland Vegetation Management Burning. The proposed amendments to Rule 444 – *Open Outdoor Fires* will implement the District's Smoke Management Program as required by Title 17 of the California Code of Regulations §§80100-80330. The proposed amendments will also add definitions to reference the District's Smoke Management Program, and update the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood. Section F will be removed as unnecessary, since amendments are effective on the date of adoption unless specified otherwise in either the rule or the resolution. Finally, amending Rule 444 will update rule citations. The MDAQMD received comments that required substantive changes to the proposed amendment of Rule 444 – *Open Outdoor Fires*, therefore the hearing was continued to the September 25, 2006 Governing Board meeting.

#### **III. STAFF RECOMMENDATION**

Staff recommends that the Governing Board of the Mojave Desert Air Quality Management District (District) adopt the proposed amendments to Rule 444 – *Open Outdoor Fires* and approve the appropriate California Environmental Quality Act (CEQA) documentation. This action is necessary to conform the rule to requirements contained in Title 17 of the California Code of Regulations; update terminology and rule citations; and eliminate unnecessary provisions.

#### IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct amendments to Rule 444 – *Open Outdoor Fires*. Each item is discussed, if applicable, in Section V. Copies of related documents are included in the appropriate appendices.

##### **FINDINGS REQUIRED FOR RULES & REGULATIONS:**

- X Necessity
- X Authority
- X Clarity
- X Consistency
- X Non-duplication
- X Reference
- X Public Notice & Comment
- X Public Hearing

##### **REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):**

- X Public Notice & Comment
- X Availability of Document
- X Notice to Specified Entities (State, Air Districts, USEPA, Other States)
- X Public Hearing
- X Legal Authority to adopt and implement the document.
- X Applicable State laws and regulations were followed.

##### **ELEMENTS OF A FEDERAL SUBMISSION:**

- X Elements as set forth in applicable Federal law or regulations.

##### **CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):**

- N/A Ministerial Action
- X Exemption
- N/A Negative Declaration
- N/A Environmental Impact Report
- X Appropriate findings, if necessary.
- X Public Notice & Comment

##### **SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):**

- X Environmental impacts of compliance.
- N/A Mitigation of impacts.
- N/A Alternative methods of compliance.

##### **OTHER:**

- X Written analysis of existing air pollution control requirements
- X Economic Analysis
- X Public Review

## V. DISCUSSION OF LEGAL REQUIREMENTS

### A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed amendments to Rule 444. These are actions that need to be performed and/or information that must be provided in order to amend the rule in a procedurally correct manner.

#### 1. State Findings Required for Adoption of Rules & Regulations

Before adopting, amending, or repealing a rule or regulation, the District Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

##### a. Necessity

The proposed amendments to Rule 444 are necessary conform the rule to requirements contained in Title 17 of the California Code of Regulations; update terminology and rule citations; and eliminate unnecessary provisions.

##### b. Authority

The District has the authority pursuant to California Health and Safety Code (H & S Code) §40702 to adopt, amend or repeal rules and regulations.

##### c. Clarity

The proposed amendments to Rule 444 are clear in that they are written so that the persons subject to the Rule can easily understand the meaning.

##### d. Consistency

The proposed amendments to Rule 444 are in harmony with, and not in conflict with or contradictory to any State law or regulation, Federal law or regulation, or court decisions.

##### e. Nonduplication

The proposed amendments to Rule 444 do not impose the same requirements as any existing State or Federal law or regulation because State and Federal law requires the adoption and implementation of this Program.

f. Reference

The District has the authority pursuant to H & S Code §40702 to adopt, amend or repeal rules and regulations.

g. Public Notice & Comment, Public Hearing

Notice for the public hearing for the proposed amendments to Rule 444 was published July 28, 2006. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals)

Submittals to the United States Environmental Protection Agency (USEPA) are required to include various elements depending upon the type of document submitted and the underlying Federal law that requires the submittal. The information below indicates which elements are required for the proposed amendments to Rule 444 and how they were satisfied.

a. Satisfaction of Underlying Federal Requirements

The amendments to Rule 444 are subject to all the requirements for a State Implementation Plan (SIP) submittal because Rule 444 is included in the MDAQMD SIP. The criteria for determining completeness of SIP submissions are set forth in 40 CFR Part 51, Appendix V, 2.0.

b. Public Notice and Comment

Notice for the public hearing for the proposed amendments to Rule 444 was published July 28, 2006. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

c. Availability of Document

Copies of the proposed amendments to Rule 444, the accompanying draft staff report, and the Smoke Management Program was made available to the public on July 28, 2006 and August 16, 2006. The proposed amendments were also reviewed by public and private land management agencies and fire departments.

d. Notice to Specified Entities

Copies of the proposed amendments to Rule 444 and the accompanying draft staff report were sent to all affected agencies.



The proposed amendments were sent to CARB and USEPA on July 24, 2006 and August 16, 2006.

e. Public Hearing

A public hearing to consider the proposed amendments to Rule 444 will be held September 25, 2006.

f. Legal Authority to Adopt and Implement

The District has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the duties imposed upon the District.

g. Applicable State Laws and Regulations Were Followed

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code §40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the California Environmental Quality Act (CEQA).

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H & S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district.

The USEPA has adopted a “Prescribed Burning Control Measure” (57 FR 18072, 4/28/92), which sets forth RACT for this source category. This is a guidance document which directs states to address emissions from prescribed burning by utilizing a smoke management program as described in the National Wildlife Coordinating Group’s Prescribed Fire Smoke Management Guide (NFES No. 1279, 2/85) and the Prescribed Fire Plan Guide (NFES No. 1939, 8/86). The State has developed Smoke Management Guidelines for Agricultural and prescribed burning in Title 17 of the California Code of Regulations §§80100-80330. This document contains the components recommended in the Prescribed Burning Control Measure.

## C. ECONOMIC ANALYSIS

### 1. General

Amendments to Rule 444 will affect public and private land management agencies and fire services. Similar requirements are already being enforced by most other Air Districts and have been or are being incorporated into protocol completed by the affected agencies. These amendments will have minimal economic impact on the affected agencies.

### 2. Incremental Cost Effectiveness

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act requirements for Best Available Retrofit Control Technology (BARCT) or “all feasible measures” to control volatile compounds, oxides of nitrogen or oxides of sulfur. The proposed amendments to Rule 444 are not subject to incremental cost effectiveness calculations because they do not involve BARCT or “all feasible measures”.

## D. ENVIRONMENTAL ANALYSIS (CEQA)

Through the process described below the appropriate CEQA process for the proposed amendments to Rule 444 was determined.

1. The proposed amendments to Rule 444 meet the CEQA definition of “project”. They are not “ministerial” actions.

2. The proposed amendments to Rule 444 are exempt from CEQA review because they will not create any adverse impacts on the environment. Because there is no potential that the amendments might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies. Copies of the documents relating to CEQA can be found in Appendix “D”.

## E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

### 1. Potential Environmental Impacts

There are no potential environmental impacts of compliance with the proposed amendments to Rule 444. These amendments are codifying state law by implementing the Smoke Management Program. Additionally, these amendments are simply clarifying definitions of materials not to be burned, however, these materials would not have been burned prior to these amendments.

### 2. Mitigation of Impacts

N/A

### 3. Alternative Methods of Compliance

N/A

## F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix “B”.

## VI. TECHNICAL DISCUSSION

### A. SOURCE DESCRIPTION

Rule 444 – *Open Outdoor Fires* regulates all persons that set and/or permit Open Outdoor Fires, including, but not limited to, Tumbleweed burning, Agricultural Burning, field crop burning, Range Improvement Burning, Forest Management Burning, and Wildland Vegetation Management Burning.

This rule will now require that all burn projects greater than 10 acres in size or estimated to produce more than 1 ton of particulate matters are conducted in accordance with the provisions of the Smoke Management Program. This is an administrative change only, as the functional requirements were previously made to State law.

### B. EMISSIONS

The proposed amendments to Rule 444 do not reduce emissions. These amendments are codifying state law by implementing the Smoke Management Program. Additionally, these amendments are simply clarifying definitions of materials not to be burned, however, these materials would not have been allowed to be burned prior to these amendments.

### C. CONTROL REQUIREMENTS

The proposed amendments to Rule 444 do not change control requirements. They do not impose any new or additional requirements other than codifying state law by implementing the Smoke Management Program, and clarifying definitions of materials not to be burned.

### D. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed amendments to Rule 444. Readers are encouraged to examine the *[bracketed and italicized]* notations contained in the iterated version of the rule contained in Appendix A for notations regarding movement and modification of specific sections and subsections.

Section (A)(1)(a) has been changed to include the word “and”.

Section (A)(1)(b) has been added to include the purpose of applying the District Smoke Management Program.

Section (B) has been renumbered to reflect the addition and removal of definitions.

Section (B)(1) has been corrected for capitalization and punctuation.

Section (B)(3) has been changed grammatically for clarity.

Section (B)(5) definition has been removed and replaced by definition (13) – Smoke Management Plan.

Sections (B)(8), (B)(10), and (B)(11) have been corrected for capitalization.

Sections (B)(13) and (B)(14) are new definitions added as a result of the implementation of the District Smoke Management Program.

Section (C) has been renumbered to reflect an additional requirement.

Section (C)(1) adds the parameters for when The Smoke Management Program is to be implemented.

Section (C)(2) updates the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood.

Section (C)(4) has been revised to correspond to CARB terminology.

Section (C)(6) replaces “burn plan” with “Smoke Management Plan”.

Section (C)(6)(c) updates the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood.

Section (C)(7)(e)(ii) has been corrected for capitalization.

Section (C)(8)(b) replaces “burn plan” with “Smoke Management Plan”.

Sections (D)(1)(c) and (D)(1)(d) have been removed because the exemptions have been removed from the Health and Safety Code.

Section (F) has been removed as unnecessary, since amendments are effective on the date of adoption unless specified otherwise in either the rule or the resolution.

## E. SIP HISTORY

### 1. SIP History

#### a. SIP in the San Bernardino County Portion of MDAQMD

Rule 444 was originally adopted on October 8, 1976 by the Southern California Air Pollution Control District (So.Cal.APCD) which was created by a Joint Powers Agreement (JPA) between Los Angeles, Orange, Riverside and San Bernardino Counties to replace the previous countywide air pollution control districts for those counties. On February 1, 1977, pursuant to statute (Cal. Stats. 1976, Ch 324 p. 815) the South Coast Air Quality Management District (SCAQMD) was created with an initial jurisdiction that only included areas of Los Angeles, Orange, Riverside and San Bernardino Counties contained within the South Coast Air Basin (SCAB). Outlying areas remained under the So. Cal. APCD. Also on February 1, 1977 the California Air Resources Board (CARB) issued Executive Order G-73 (1977) which adopted a “rule book” for those non-SCAB areas of Los Angeles, Riverside and San Bernardino Counties. CARB submitted the G-73 rulebook on behalf of the “county” districts and these rule books included Rule 444. Rule 444 was disapproved and prior Rule 57 was retained December 21, 1978 (43 FR59488, 40 CFR 52.220(c)(42)(xiii)(A) and 40 CFR 52.273(6)(12)(i)).

By its terms Executive Order G-73 (1977) was only effective until the non-SCAB areas took other action. On February 22, 1977 the JPA forming the So.Cal.APCD was formally dissolved. By the terms of the JPA upon dissolution each county would regain its county air pollution control district with a jurisdiction of the non-SCAB areas of the county and the applicable rules being the SoCal.APCD’s rules in effect upon the date of dissolution. Thus, as of February 22, 1977 the version of Rule 444 for the San Bernardino County APCD (SBCAPCD) reverted from the G-73 (1977) CARB version back to the original So.Cal.APCD October 8, 1976 version.

On July 25, 1977 the SBCAPCD readopted its rulebook including Rule 444.

On July 1, 1993 the MDAQMD was formed pursuant to statute. Pursuant to statute it also retained all the rules and regulations of the SBCAPCD until such time as the Governing Board of the

MDAQMD wished to adopt, amend or rescind such rules. The MDAQMD Governing Board, at its very first meeting, reaffirmed all the rules and regulations of the SBCAPCD. Rule 444 was subsequently amended by the MDAQMD on November 25, 1996 and submitted as amended as a SIP submission on March 3, 1997. Since SIP revisions in California are adopted by USEPA as effective in areas which happen to be defined by both air basin designations and the jurisdictional boundaries of local air districts within those air basins, the MDAQMD “inherited” the SBCAPCD SIP which was in effect for what is now called the San Bernardino County Portion of Mojave Desert Air Basin (MDAB). Therefore, the July 25, 1977 version of Rule 444 is the version included in the SIP since the EPA has taken no action on the March 3, 1997 submission.

b. SIP in the Riverside County (Blythe/Palo Verde Valley) Portion of the MDAQMD

One of the provisions of the legislation which created the MDAQMD allowed areas contiguous to the MDAQMD boundaries and within the same air basin to leave their current air district and become a part of the MDAQMD. On July 1, 1994 the area commonly known as the Palo Verde Valley in Riverside County, including the City of Blythe, left SCAQMD and joined the MDAQMD. Since USEPA adopts SIP revisions in California as effective within the jurisdictional boundaries of local air districts, when the local boundaries change the SIP as approved by USEPA for that area up to the date of the change remains as the SIP in that particular area. Upon annexation of the Blythe/Palo Verde Valley the MDAQMD acquired the SIP prior to July 1, 1994 that was effective in the Blythe/Palo Verde Valley. Therefore, the SIP history for the Blythe/Palo Verde Valley Portion of the MDAQMD is based upon the rules adopted and approved for that portion of Riverside County by SCAQMD.

The original So.Cal.APCD version of Rule 444 as adopted October 8, 1978 was also effective in Riverside County. Thereafter, the SIP history for Rule 444 in Riverside County remains the same as that in the non SCAB areas of San Bernardino County until early 1978. As of January 1, 1978 the non-SCAB portions of Los Angeles, Riverside and San Bernardino Counties were allowed to “opt in” to SCAQMD (Cal Stats 1977 Ch 1195 pg. 4005). Both Los Angeles and Riverside counties did so while San Bernardino County did not. SCAQMD amended Rule 444 on October 2, 1981 and submitted it as a SIP revision for its entire jurisdiction including the Blythe/Palo Verde Valley area. USEPA approved the submission on July 6, 1982 at 40 CFR 52.220(c)(104)(ii)(A)

(47 FR 29231). SCAQMD subsequently amended it on October 2, 1987 and again submitted it as a SIP revision. On April 12, 1999 in 64 FR 17589, USEPA proposed granting limited approval and limited disapproval of SCAQMD Rule 444. On July 26, 2000 in 65 FR 45912, USEPA granted limited approval to this version “to strengthen the SIP and finalize the limited disapproval requiring the correction of the remaining deficiencies”. On July 1, 1994 the Blythe/Palo Verde Valley area became part of the MDAQMD. At that time the SIP version of Rule 444 appeared to be the October 2, 1981 version. Since the USEPA action on the October 2, 1987 version occurred after the area left SCAQMD and SIP revisions are generally effective only for the territory of the named district, this action should not affect the SIP in the Blythe/Palo Verde Valley area.

On November 25, 1996 the MDAQMD amended Rule 444 and submitted it as a SIP revision for its entire jurisdiction including the Blythe/Palo Verde Valley. No action appears to have been taken by USEPA on this version. Therefore, the applicable SIP version for Rule 444 effective in the Blythe/Palo Verde Valley appears to be the October 2, 1981 SCAQMD version.

## 2. SIP Analysis

The District will request CARB to submit the proposed amendments to Rule 444 to replace the SIP versions in effect in the San Bernardino County portion of the MDAB and the Blythe/Palo Verde Valley portion of Riverside County. This submission is necessary because there are two different SIP versions currently in effect within the MDAQMD. In addition, the proposed amendments will codify state law by implementing the Smoke Management Program, and clarify definitions of materials not to be burned.

Since there are previously existing SIP rules for this category the District will request that they be superseded. In order to replace existing SIP rules the District is required to show that the proposed amendments are not less stringent than the provisions currently in the SIP. The amended rule is more stringent than the prior rule because it has implemented Title 17 of the California Code of Regulations as the District Smoke Management Program. It is also more stringent in that it has updated the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood.

This page intentionally left blank.



## **Appendix “A”**

### **Rule 444 - *Open Outdoor Fires* Iterated Version**

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1.     Underlined text identifies new or revised language.
2.     ~~Lined out text~~ identifies language which is being deleted.
3.     Normal text identifies the current language of the rule which will remain unchanged by the adoption of the proposed amendments.
4.     *[Bracketed italicized text]* is explanatory material that is not part of the proposed language. It is removed once the proposed amendments are adopted.

This page intentionally left blank.

## Rule 444

### Open Outdoor Fires

#### (A) General

##### (1) Purpose

- (a) The purpose of this Rule is to ensure that the ambient air quality is not significantly degraded due to Open Outdoor Fires; and,
- (a) To apply the District Smoke Management Program to specified applications while minimizing smoke impacts to the public.

##### (2) Applicability

- (a) The requirements of this Rule shall apply to persons that set and/or permit Open Outdoor Fires, including, but not limited to Tumbleweed burning, Agricultural Burning, field crop burning, Range Improvement Burning, Forest Management Burning, and Wildland Vegetation Management Burning.

#### (B) Definitions

For the purposes of this Rule, the following definitions shall apply:

- (1) “Agricultural Burning” - Open Outdoor Fires used in Agricultural Operations, including the burning of Agricultural Wastes, or Open Outdoor Fires used in disease and pest prevention. Agricultural Burning also includes Open Outdoor Fires used in the operation or maintenance of a system for the delivery of water in Agricultural Operations.
- (2) “Agricultural Operations” - Any operation occurring on a ranch or farm directly related to the growing of crops or raising of fowls or animals for the primary purpose of making a profit, for a livelihood, or for conducting agricultural research or instruction by an educational institution.
- (3) “Agricultural Wastes” - Unwanted or unsalable materials produced wholly from Agricultural Operations, other than forest or range management operations. Agricultural Wastes do not include pesticide and fertilizer containers, except sacks, burned in the field where they were emptied. Agricultural Wastes do not

include broken boxes, pallets, sweat boxes, packaging material, packing boxes, or any other materials produced in the packing or processing of agricultural products. Agricultural Wastes do not include wastes created by land use conversion to non-agricultural purposes unless the destruction of such waste by Open Outdoor Fire is ordered by the County Agricultural Commissioner or the Secretary of California Department of Food and Agriculture upon his determination that the waste is infested with infectious transmittable or contagious plant disease or pest which is an immediate hazard to Agricultural Operations conducted on adjoining or nearby property.

- (4) “Air Pollution Control Officer” (APCO) - The person appointed to the position of Air Pollution Control Officer of the District pursuant to the provisions of California Health & Safety Code §40750, and his or her designee.
- (5)
- (5) “Approved Ignition Devices” - Those instruments or materials that will ignite combustible material without the production of black smoke by the ignition device. This would include such items as liquid petroleum gas, butane, propane, and flares where the device produces a flame and the flame is then used for ignition. For the purposes of igniting Prescribed Burns, heli-torch, terra-torch, drip-torch, and the equivalent ignition devices and methods will be considered approved ignition devices.
- (6) “California Air Resources Board (CARB)” - The California State Air Resources Board, the powers and duties of which are described in Part 2 of Division 26 of the California Health and Safety Code (commencing with §39500).
- (7) “Forest Management Burning” - The use of Prescribed Burning, as part of a forest management practice, to remove forest debris. Forest management practices include Timber Operations, Silvicultural practices, and forest protection practices.
- (8) “Imminent and Substantial Economic Loss” - The loss of a planting season or the irreparable harm of a crop.
- (9) “Open Outdoor Fire” - Any combustion (including detonation) of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue, except: any outdoor fire burned according to an existing District permit, blasting operations permitted by the California Occupational Safety and Health Administration, and detonation associated with military operations.
- (10) “Prescribed Burning” - The planned application of fire, including natural or accidental ignition, to vegetation to achieve any specific objective on lands selected in advance of that application.

- (11) “Range Improvement Burning” - The use of Prescribed Burning to remove vegetation for a wildlife, game or livestock habitat, or for the initial establishment of an agricultural practice on previously uncultivated land.
- (12) “Silviculture” - The establishment, development, care, and reproduction of stands of timber.
- (13) “Smoke Management Plan” - A document prepared for each fire in accordance with the Smoke Management Program.
- (14) “Smoke Management Program” - The most recent version of the program required by Title 17 of the California Code of Regulations §§80100-80330 and adopted by the APCO.
- (15) “Timber Operations” - The cutting or removal of timber or other forest vegetation for the purpose of producing commercial forest products.
- (16) “Tumbleweeds” - Russian thistle (*Salsola kali*).
- (17) “Wildland Vegetation Management Burning” - The use of Prescribed Burning conducted by a public agency , or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral (as defined in Title 14, CCR, §1561.1), trees, grass, or standing brush.

### (C) Requirements

- (1) All burn projects greater than 10 acres in size or estimated to produce more than 1 ton of particulate matter shall be conducted in accordance with the provisions of the Smoke Management Program.
- (2) Except as otherwise provided for in this Rule, no person shall set, permit, or use an Open Outdoor Fire for the purpose of disposal or burning of petroleum wastes; asbestos; treated wood; demolition or construction debris; residential rubbish; garbage or vegetation; tires; tar; trees; wood waste; or other combustible or flammable solid, liquid or gaseous waste; or for metal salvage or burning of motor vehicle bodies.
- (3) A person shall not set or permit an Open Outdoor Fire when prohibited by District Rule 708 or in any geographic area when CARB or the APCO (or the local fire protection agency, in the case of an existing burn permit) prohibits burning in that area due to adverse meteorological conditions, unless such burning is required to alleviate an Imminent and Substantial Economic Loss and the total area burned within the District on that day does not exceed 200 acres.
- (4) Upon request from a permittee through a designated agency, seven days in advance of a specific Prescribed Burn, at any elevation below 6,000 feet mean sea level, a permissive-burn, marginal-burn, or no-burn notice will be issued by CARB up to 48 hours prior to the date scheduled for the burn. Without further

request, a daily notice will continue to be issued until a permissive-burn or marginal-burn notice is issued. Permissive-burn and marginal-burn notices that have been issued more than 24 hours in advance may be canceled if the cancellation is necessary to maintain suitable air quality. *[added because this is an additional notice issued by CARB]*

- (5) The local fire protection agency, CARB or the APCO shall, for each geographic area, determine meteorological conditions which will cause Open Outdoor Fires to have an adverse effect on the ambient air quality in that area. A list of the geographic areas and specific meteorological conditions for each area shall be maintained at the District offices and shall be made available to the public.
- (6) A person shall not burn or permit the burning of combustible material in an Open Outdoor Fire, except for Prescribed Burns done in accordance with an approved Smoke Management Plan, unless such combustible material:
  - (a) Is ignited as rapidly as practicable using Approved Ignition Devices within applicable fire control restrictions;
    - (i) Field crops shall be ignited only by strip firing into the wind or by backfiring, except where crops are determined not to lend themselves to such ignition;
  - (b) Has been stacked or piled in such a manner as to promote drying and insure combustion with a minimum of smoke production, and has dried sufficiently to ensure rapid combustion (unless agricultural or Silvicultural practices dictate otherwise). Minimum drying times are:
    - (i) Three weeks for prunings and small branches (less than two inches in diameter);
    - (ii) Six weeks for large branches and stumps (greater than two inches in diameter);
    - (iii) One week for wastes from field crops that are cut in green condition;
    - (iv) Zero days for dry cereals; or
    - (v) One week for other materials.
  - (c) Is free of tires, oil filters, rubber, tar paper, plastics, shop wastes, asbestos, treated wood, demolition debris, construction debris and other rubbish, and is reasonably free of dirt, soil and visible surface moisture; and,
  - (d) Is burned during daylight hours, with no ignition prior to 6 a.m. and with all combustion extinguished within one hour of sunset. In addition, within San Bernardino County there shall be no ignition after 12 noon, and no combustible material shall be added to an existing fire after 3 p.m.
- (7) A person shall not set or permit an Open Outdoor Fire without first obtaining a written permit for such burning from the local fire protection agency, and such

burning shall be conducted in accordance with that agency's fire laws and regulations. Such permit shall have form and content approved by the APCO, as required by District Rule 208. Such permit may be granted only for any of the following reasons:

- (a) Where a fire hazard, to life or property, is declared by the local fire protection agency and such fire hazard cannot be abated by any other means;
  - (b) For Agricultural Burning;
  - (c) For disposal of Tumbleweeds;
  - (d) For the burning of infectious waste other than hospital waste upon order of the County Health Officer to abate a public health hazard;
  - (e) For the burning of the following materials, as long as such material is burned on the property where it was grown:
    - (i) Wood waste from trees, vines, or brush on commercial or residential property; and
    - (ii) Brush cuttings resulting from brush clearance done in compliance with local ordinances to reduce fire hazard.
  - (f) For the burning of empty boxes and paper and fiber packing materials which have previously contained high explosives used in blasting operations permitted by the California Occupational Safety and Health Administration, as long as such burn occurs at least 670 feet from the nearest property line.
  - (g) For right-of-way clearance by a public entity or utility.
- (8) Notwithstanding the provisions of section (C)(7), a person may burn or permit an Open Outdoor Fire for any of the following purposes, provided such fire is set by, or under the jurisdiction of, a designated fire agency having jurisdiction over the proposed burn location(s), and the total area burned with Prescribed Burns within the District does not exceed 1,000 acres in any one day:
- (a) For the instruction of employees in the methods of fighting fires;
  - (b) For Forest Management, Range Improvement or Wildland Vegetation Management Burning, provided the fire is a Prescribed Burn performed in accordance with an approved Smoke Management Plan; and
  - (c) For research or filming purposes.

#### (D) Exemptions

- (1) The requirements of this Rule shall not apply to:
  - (a) Backfires necessary to save life or valuable property pursuant to the Public Resources Code (§4426) set by, or under the jurisdiction of a fire protection agency, and the ignition devices used to set such backfires;
  - (b) Recreational fires, ceremonial fires, and cooking fires, where the combustible material is clean, dry wood or charcoal;

*[exemption no longer included in Health and Safety Code]* *[exemption no longer included in Health and Safety Code]*(2) The notification requirement given in Section (E)(2) shall not apply to instructional fires solely involving the combustion of propane or natural gas.
- (3) The area limit in Section (C)(6) shall not apply if the following information is provided to the APCO for review and approval thirty (30) days in advance of the proposed Prescribed Burning:
  - (a) Location and specific objectives of the burning;
  - (b) Acreage, type, and arrangement of vegetation to be burned;
  - (c) Directions and distances to nearby sensitive receptor areas;
  - (d) Fuel condition, combustion, and meteorological prescription elements developed for the project;
  - (e) Projected schedule and duration of project ignition, combustion, and burn down;
  - (f) Specifications for monitoring and verifying of critical parameters;
  - (g) Specifications for disseminating project information; and
  - (h) Contingent suppression measures in case of public nuisance or exceedance of state or federal ambient air quality standard.

**(E) Monitoring, Recordkeeping and Reporting**

- (1) The APCO shall receive a copy of any permit granted under Section (C)(5) within ninety (90) days of the issuance of such permit.
- (2) The APCO shall be notified prior to burning conducted under the provisions of Section (C)(6), by written means or a phone call received prior to the start of the burn.



(

[SIP: Submitted as amended 11/25/96 on 3/3/97; Disapproved prior Rule 57 retained 12/21/78, 43 FR 59488, 40 CFR 52.220(c)(42)(xiii)(A) and 40 CFR 52.273(6)(12)(i)]

This page intentionally left blank.

**Appendix “B”**  
Public Notice Documents

1. Proof of Publication – Daily Press July 28, 2006
2. Proof of Publication – Riverside Press Enterprise July 28, 2006

This page intentionally left blank.

## PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA,  
County of San Bernardino

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the publisher of the DAILY PRESS, a newspaper of general circulation, published in the City of Victorville, County of San Bernardino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Bernardino, State of California, under the date of November 21, 1938, Case Number 43096, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

July 28

all in the year 20 06

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated this 28th day

of July, 20 06

Signature  
Leslie Jacobs

LGL 202 (12/99)

This space is the County Clerk's Filing Stamp

FILED  
MOJAVE DESERT AQMD  
CLERK OF THE BOARD

AUG 01 2006

BY

### Proof of Publication of

### NOTICE OF HEARING

#### NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) will conduct a public hearing on August 28, 2006 at 10:00 A.M. to consider the proposed amendment to Rule 444 - Open Outdoor Fires.

SAID HEARING will be conducted in the Governing Board Chambers located at the MDAQMD offices 14306 Park Avenue, Victorville, CA 92392-2310 where all interested persons may be present and be heard. Copies of the proposed amendment to Rule 444 - Open Outdoor Fires and the Staff Report are on file and may be obtained from the Clerk of the Governing Board at the MDAQMD Offices. Written comments may be submitted to Eldon Heaston, Executive Director at the above office address. Comments must be received no later than August 21, 2006 to be considered. If you have any questions you may contact Tracy Walters at (760) 243-1661 x6122 for further information.

The proposed amendments to Rule 444 - Open Outdoor Fires will implement the District's Smoke Management Program as required by Title 17 of the California Code of Regulations §§80100-80330. The proposed amendments will also add definitions to reference the District's Smoke Management Program, and update the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood. Section F will be removed as unnecessary, since amendments are effective on the date of adoption unless specified otherwise in either the rule or the resolution. Finally, amending Rule 444 will update rule citations.

Pursuant to the California Environmental Quality Act (CEQA) the MDAQMD has determined that a Categorical Exemption (Class 8 - 14, Cal. Code Reg. §15308) applies and has prepared a Notice of Exemption for this action.

Michele Bald  
Clerk of the Board  
Mojave Desert Air Quality Management District

Published in the Daily Press  
July 28, 2006  
(F-45)

*[Insert public notice image here]*

## **Appendix “C”**

### **Public Comments and Responses**

None received to date

This page intentionally left blank.



*[Insert comment letter image here]*

*[Insert Response here.]*

**Appendix “D”**  
California Environmental Quality Act  
Documentation

1. Notice Of Exemption – Riverside County
2. Notice Of Exemption – San Bernardino County

This page intentionally left blank.

## NOTICE OF EXEMPTION

**TO:** County Clerk  
San Bernardino County  
385 N. Arrowhead, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415

**FROM:** Mojave Desert  
Air Quality Management District  
14306 Park Ave  
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

**PROJECT TITLE:** Amendment to Rule 444 – *Open Outdoor Fires*

**PROJECT LOCATION – SPECIFIC:** San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

**PROJECT LOCATION – COUNTY:** San Bernardino and Riverside Counties

**DESCRIPTION OF PROJECT:** Rule 444 – *Open Outdoor Fires* regulates open outdoor fires, including, but not limited to, Tumbleweed burning, Agricultural Burning, field crop burning, Range Improvement Burning, Forest Management Burning, and Wildland Vegetation Management Burning. The proposed amendments to Rule 444 – *Open Outdoor Fires* will implement the District's Smoke Management Program as required by Title 17 of the California Code of Regulations §§80100-80330. The proposed amendments will also add definitions to reference the District's Smoke Management Program, and update the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood. Section F will be removed as unnecessary, since amendments are effective on the date of adoption unless specified otherwise in either the rule or the resolution. Finally, amending Rule 444 will update rule citations.

**NAME OF PUBLIC AGENCY APPROVING PROJECT:** Mojave Desert AQMD

**NAME OF PERSON OR AGENCY CARRYING OUT PROJECT:** Mojave Desert AQMD

**EXEMPT STATUS (CHECK ONE)**

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)

Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))

X Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

**REASONS WHY PROJECT IS EXEMPT:** The proposed amendments to Rule 444 are exempt from CEQA review because they will not create any adverse impacts on the environment. Because there is not potential that the amendments might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

**LEAD AGENCY CONTACT PERSON:** Eldon Heaston **PHONE:** (760) 245-1661

**SIGNATURE:** \_\_\_\_\_ **TITLE:** Executive Director **DATE:** September 25, 2006

**DATE RECEIVED FOR FILING:**

## NOTICE OF EXEMPTION

**TO:** Clerk/Recorder  
Riverside County  
3470 12th St.  
Riverside, CA 92501

**FROM:** Mojave Desert  
Air Quality Management District  
14306 Park Ave  
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

**PROJECT TITLE:** Amendment to Rule 444 – *Open Outdoor Fires*

**PROJECT LOCATION – SPECIFIC:** San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

**PROJECT LOCATION – COUNTY:** San Bernardino and Riverside Counties

**DESCRIPTION OF PROJECT:** Rule 444 – *Open Outdoor Fires* regulates open outdoor fires, including, but not limited to, Tumbleweed burning, Agricultural Burning, field crop burning, Range Improvement Burning, Forest Management Burning, and Wildland Vegetation Management Burning. The proposed amendments to Rule 444 – *Open Outdoor Fires* will implement the District's Smoke Management Program as required by Title 17 of the California Code of Regulations §§80100-80330. The proposed amendments will also add definitions to reference the District's Smoke Management Program, and update the list of materials prohibited from being burned in open outdoor fires to include asbestos and treated wood. Section F will be removed as unnecessary, since amendments are effective on the date of adoption unless specified otherwise in either the rule or the resolution. Finally, amending Rule 444 will update rule citations.

**NAME OF PUBLIC AGENCY APPROVING PROJECT:** Mojave Desert AQMD

**NAME OF PERSON OR AGENCY CARRYING OUT PROJECT:** Mojave Desert AQMD

**EXEMPT STATUS (CHECK ONE)**

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)

Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))

X Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

**REASONS WHY PROJECT IS EXEMPT:** The proposed amendments to Rule 444 are exempt from CEQA review because they will not create any adverse impacts on the environment. Because there is not potential that the amendments might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

**LEAD AGENCY CONTACT PERSON:** Eldon Heaston **PHONE:** (760) 245-1661

**SIGNATURE:** \_\_\_\_\_ **TITLE:** Executive Director **DATE:** September 25, 2006

**DATE RECEIVED FOR FILING:**

## **Appendix “E”**

### **Bibliography**

The following documents were consulted in the preparation of this staff report.

1. MDAQMD Smoke Management Program
2. 57 FR 18072, 4/28/92

This page intentionally left blank